

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Emeraldbrooke II, LLC)	File No: EB-FIELDNER-12-00005644
)	NAL/Acct. No.: 201332360002
Owner of Antenna Structure Number 1045635)	FRN: 0016916769
Novi, Michigan)	

ORDER

Adopted: December 11, 2013

Released: December 11, 2013

By the Regional Director, Northeast Region, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau of the Federal Communications Commission (Bureau) and Emeraldbrooke II, LLC (Emeraldbrooke). The Consent Decree terminates the investigation and the Notice of Apparent Liability for Forfeiture and Order issued by the Bureau for possible violations by Emeraldbrooke of Sections 17.4(g), 17.50 and 17.57 of the Commission's rules (Rules)¹ concerning Emeraldbrooke's antenna structure in Novi, Michigan.

2. The Bureau and Emeraldbrooke have negotiated the terms of a Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated herein by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. Accordingly, **IT IS ORDERED**, pursuant to Section 4(i) and 503(b) of the Communications Act of 1934, as amended,² and Sections 0.111 and 0.311 of the Commission's rules,³ the Consent Decree attached to the Order **IS ADOPTED**.

5. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

¹ 47 C.F.R. §§ 17.4(g), 17.50, 17.57.

² 47 U.S.C. §§ 154(i), 503(b).

³ 47 U.S.C. §§ 0.111, 0.311.

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by both first class mail and certified mail, return receipt requested to Emeraldbrooke at 38701 Seven Mile Road, Suite 245, Livonia, Michigan 48152, and to its counsel and agent, Michael R. Dorfman, Nykanen & Dorfman, at 33493 W. 14 Mile Road, Farmington Hills, Michigan 48331.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt
Regional Director
Northeast Region
Enforcement Bureau

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CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission (Bureau) and Emeraldbrooke II, LLC (Emeraldbrooke), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation into possible violations of Sections 17.4(g), 17.50 and 17.57 of the Commission's rules¹ pertaining to Emeraldbrooke's failure to: (1) display the Antenna Structure Registration Number near the base of Emeraldbrooke's antenna structure in a conspicuous place so that it was readily visible; (2) repaint its antenna structure as often as necessary to maintain good visibility; and (3) immediately notify the Commission upon a change in ownership of its antenna structure.

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) "Additional Penalty Payment" means payment of one thousand dollars (\$1,000) to the United States Treasury for each day after the Dismantlement Date that the Antenna Structure remains standing.
 - (c) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (d) "Antenna Structure" means antenna structure number 1045635 located in Novi, Michigan, and owned by Emeraldbrooke.
 - (e) "Antenna Structure Rules" means Part 17 of the Rules and other Communications Laws governing antenna structures. These Rules encompass, among other things, the registration, painting, and monitoring of antenna structures.
 - (f) "ASR" means antenna structure registration.
 - (g) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.

¹ 47 C.F.R. §§ 17.4(g), 17.50, 17.57.

- (h) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
- (i) “Communications Laws” means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Emeraldbrooke is subject by virtue of its ownership of an antenna structure subject to Part 17 of the Rules.
- (j) “Dismantle” or Dismantlement” means to remove the Antenna Structure in its entirety.
- (k) “Dismantlement Date” means the date by which Emeraldbrooke must dismantle its Antenna Structure, *i.e.*, ninety (90) calendar days after the Effective Date of the Adopting Order, as defined herein.
- (l) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (m) “Emeraldbrooke” means Emeraldbrooke II, LLC and its predecessors-in-interest and successors-in-interest.
- (n) “Initial Penalty Payment” means payment of twenty-five thousand dollars (\$25,000) to the United States Treasury in the event Emeraldbrooke fails to dismantle the Antenna Structure by the Dismantlement Date.
- (o) “Investigations” means collectively, the investigations commenced by the Bureau on October 5, 2011, regarding Emeraldbrooke’s compliance with Part 17 of the Rules.
- (p) “Parties” means Emeraldbrooke and the Bureau, each of which is a “Party.”
- (q) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

3. Section 17.50 of the Rules states that “[a]ntenna structures requiring painting under this part shall be cleaned or repainted as often as necessary to maintain good visibility.”² Section 17.4(g) of the Rules requires that the ASR number be displayed in a conspicuous place so that it is readily visible near the base of the antenna structure.³ Section 17.57 of the Rules states that the “owner [of a registered antenna structure] must also immediately notify the Commission, using FCC Form 854, upon any change in structure height or change in ownership information.”⁴

4. On October 5, 2011, an agent from the Bureau’s Detroit Office inspected the Antenna Structure and observed that the ASR number was not posted at the base of the Antenna Structure and that the paint on the Antenna Structure was so severely faded that it no longer provided good visibility. The agent also found that, although Emeraldbrooke has owned the Antenna Structure since 2002, the ASR database did not list Emeraldbrooke as the owner of the Antenna Structure.

² 47 C.F.R. § 17.50.

³ 47 C.F.R. § 17.4(g).

⁴ 47 C.F.R. § 17.57.

5. On November 4, 2011, the Detroit Office issued a *Warning Letter* to Emeraldbrooke for failure to: (1) post the ASR number near the base of its Antenna Structure; (2) change the ownership information for the Antenna Structure; and (3) clean and repaint its Antenna Structure as often as necessary to maintain good visibility.⁵ In response to the *Warning Letter*, Emeraldbrooke stated that it believed it had updated the ownership information in the ASR database and that it had contacted a vendor to post the ASR number and to obtain an estimate for re-painting the Antenna Structure.⁶

6. Notwithstanding the *Warning Letter* and Emeraldbrooke's statements in its *Warning Letter Response*, on December 30, 2011, and again on May 8, 2012, and March 14, 2013, agents from the Detroit Office found that the ASR number was not posted at the base of the Antenna Structure and that the paint on the Antenna Structure was still severely faded. In addition, on each of those dates, an agent checked the ASR database and the prior owner was still listed as the owner of the Antenna Structure. On May 3, 2013, the Detroit Office issued a Notice of Apparent Liability for Forfeiture and Order, finding that Emeraldbrooke apparently violated Sections 17.4(g), 17.50, and 17.57 of the Rules and proposing a monetary forfeiture in the amount of \$25,000.⁷

7. In response to the *NAL*, Emeraldbrooke reported that it owns no other antenna structures and that it intends to dismantle the Antenna Structure.

III. TERMS OF AGREEMENT

8. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

9. **Jurisdiction.** Emeraldbrooke agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

10. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

11. **Termination of Investigations.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigations. In consideration for the termination of the Investigations, Emeraldbrooke agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in the Investigations through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any

⁵ *Emeraldbrooke II, LLC*, Warning Letter (Nov. 4, 2011) (on file in EB-11-DT-0256) (*Warning Letter*).

⁶ Letter from Edmond A. Swad, Member/Manager, Emeraldbrooke II, LLC, to James A. Bridgewater, District Director, Detroit Office, Enforcement Bureau (Nov. 11, 2011) (on file in EB-11-DT-0256) (*Warning Letter Response*).

⁷ *Emeraldbrooke II, LLC*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 6227 (Enf. Bur. 2013) (*NAL*).

new proceeding, formal or informal, or take any action on its own motion against Emeraldbrooke concerning the matters that were the subject of the Investigations.

12. **Dismantlement.** For purposes of settling the matters set forth herein, Emeraldbrooke agrees that it will dismantle the Antenna Structure within ninety (90) calendar days after the Effective Date (Dismantlement Date). Emeraldbrooke further agrees that it will notify the Commission of the Dismantlement as required under the Antenna Structure Rules. Notification of the Dismantlement also shall be sent to Sharon Webber at sharon.webber@fcc.gov.

13. **Antenna Structure Purchase Notification.** By executing this Consent Decree, Emeraldbrooke represents and warrants that it does not own any other antenna structures subject to the Antenna Structure Rules. Emeraldbrooke further agrees not to purchase an antenna structure that is subject to the Antenna Structure Rules without first providing written notification to the Bureau at least one (1) month prior to such purchase so as to permit the Bureau and Emeraldbrooke to negotiate a Compliance Plan designed to ensure Emeraldbrooke's future compliance with the Antenna Structure Rules. In the event Emeraldbrooke notifies the Bureau of its intention to purchase an antenna structure that is subject to the Antenna Structure Rules, Emeraldbrooke agrees to develop and implement a Compliance Plan, mutually agreed upon by the Bureau and Emeraldbrooke, which is designed to ensure Emeraldbrooke's future compliance with the Antenna Structure Rules. The Compliance Plan shall be memorialized in an amendment to this Consent Decree and shall be in effect for a period of not more than twenty-four (24) months. Emeraldbrooke further agrees that it shall not purchase an antenna structure that is subject to the Antenna Structure Rules unless and until the Compliance Plan has been implemented. Any such written notice shall be submitted to Sharon Webber, Regional Counsel, Northeast Region, Enforcement Bureau, Federal Communications Commission, One Oxford Valley Office Building, Room 404, 2300 East Lincoln Highway, Langhorne, Pennsylvania 19047, with a copy submitted electronically at sharon.webber@fcc.gov.

14. **Termination Date.** Unless stated otherwise, the requirements of paragraphs 11 and 12 of this Consent Decree shall expire twenty-four (24) months after the Effective Date.

15. **Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints against Emeraldbrooke for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaints will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by Emeraldbrooke with the Communications Laws.

16. **Voluntary Contribution.** Emeraldbrooke agrees that it will make a voluntary contribution to the United States Treasury in the amount of fifteen thousand dollars (\$15,000) (Voluntary Contribution) within thirty (30) calendar days after the Effective Date. Emeraldbrooke shall submit the Voluntary Contribution in United States Dollars without further demand or notice by the dates specified above. Emeraldbrooke acknowledges and agrees that upon execution of this Consent Decree the Voluntary Contribution shall become a "Claim" or "Debt" as defined in 31 U.S.C. § 3701(b)(1). Upon an Event of Default (as defined below), all procedures for collection as permitted by law may, at the Commission's discretion, be initiated. Payment to the United States Treasury of the Voluntary Contribution shall be made as set forth *infra* at paragraph 17.

17. **Penalties.** If Emeraldbrooke fails to dismantle the Antenna Structure by the Dismantlement Date, Emeraldbrooke agrees that it will make an Initial Penalty Payment of twenty-five thousand dollars (\$25,000) to the United States Treasury. Emeraldbrooke also agrees that for each day after

the Dismantlement Date that Emeraldbrooke fails to dismantle the Antenna Structure, Emeraldbrooke will make an Additional Penalty Payment of one thousand dollars (\$1,000) per day to the United States Treasury until such date that the Antenna Structure has been dismantled. Emeraldbrooke shall submit the Initial Penalty Payment and any Additional Penalty Payment in United States Dollars without further demand or notice by the dates specified above. As each penalty payment accrues, Emeraldbrooke acknowledges and agrees that any such amount shall become a “Claim” or “Debt” as defined in 31 U.S.C. § 3701(b)(1). Upon an Event of Default (as defined below), all procedures for collection as permitted by law may, at the Commission’s discretion, be initiated. Payment to the United States Treasury of any Initial Penalty Payment or Additional Penalty Payment shall be made as set forth *infra* at paragraph 17 and shall be due within thirty (30) days of the date that such additional payment accrues.

18. **Payment Procedure.** Any payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Emeraldbrooke shall also send electronic notification of payment on the date such payment is made to Sharon Webber at sharon.webber@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.⁸ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

18. **Event of Default.** Emeraldbrooke agrees that an Event of Default shall occur upon the failure by Emeraldbrooke: (1) to pay the full amount of the Voluntary Contribution before the due date specified in this Consent Decree and/or (2) to pay the Initial Penalty Payment and/or any Additional Penalty Payment owed for failure to dismantle the Antenna Structure by the Dismantlement Date as specified in paragraph 11 *supra*.

19. **Interest, Charges for Collection, and Acceleration of Maturity Date.** After an Event

⁸ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

of Default has occurred under this Consent Decree, the then unpaid amount of the Voluntary Contribution, Initial Penalty Payment and/or Additional Penalty Payment shall accrue interest, computed using the rate of the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the Voluntary Contribution, Initial Penalty Payment and/or Additional Penalty Payment, together with interest, as aforesaid, any penalties permitted and/or required by the law, including but not limited to interest and penalties permitted under 31 U.S.C. § 3717 and administrative charge(s), plus the costs of collection, litigation, and attorneys' fees, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by Emeraldbrooke.

20. **Waivers.** Emeraldbrooke waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order as defined herein. Emeraldbrooke shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Emeraldbrooke nor the Commission shall contest the validity of the Consent Decree or of the Adopting Order, and Emeraldbrooke shall waive any statutory right to a trial *de novo*. Emeraldbrooke hereby agrees to waive any claims it may have under the Equal Access to Justice Act⁹ relating to the matters addressed in this Consent Decree.

21. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

22. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Emeraldbrooke does not expressly consent) that provision will be superseded by such Rule or Commission order.

23. **Successors and Assigns.** Emeraldbrooke agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

24. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigations. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the Communications Laws.

25. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

26. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

27. **Authorized Representative.** The individual signing this Consent Decree on behalf of Emeraldbrooke represents and warrants that he is authorized by Emeraldbrooke to execute this Consent Decree and to bind Emeraldbrooke and all of its subsidiaries to the obligations set forth herein. The FCC

⁹ Equal Access to Justice Act, Pub L. No. 96-481, 94 Stat. 2325 (1980) (codified at 5 U.S.C. § 504); *see also* 47 C.F.R. §§ 1.1501–1.1530.

signatory represents that he is signing this Consent Decree in his official capacity and that he is authorized to execute this Consent Decree.

28. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

G. Michael Moffitt
Regional Director, Northeast Region
Enforcement Bureau

Date

Michael R. Dorfman
Agent for Emeraldbrooke

Date